

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

LEGISLATIVE BILL 477

FINAL READING

Introduced by Carlson, 38.

Read first time January 20, 2009

Committee: Natural Resources

A BILL

1 FOR AN ACT relating to water; to amend sections 46-290, 46-291,
2 46-701, 46-706, 46-707, and 46-739, Revised Statutes
3 Cumulative Supplement, 2008; to change provisions
4 relating to water transfer permits; to require reports of
5 title as prescribed; to provide for filing instruments of
6 transfer of the right to use ground water; to harmonize
7 provisions; and to repeal the original sections.

8 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 46-290, Revised Statutes Cumulative
2 Supplement, 2008, is amended to read:

3 46-290 (1) (a) Except as provided in this section and
4 sections 46-2,120 to 46-2,130, any person having a permit to
5 appropriate water for beneficial purposes issued pursuant to
6 sections 46-233 to 46-235, 46-240.01, 46-241, 46-242, or 46-637
7 and who desires (i) to transfer the use of such appropriation to
8 a location other than the location specified in the permit, (ii)
9 to change that appropriation to a different type of appropriation
10 as provided in subsection (3) of this section, or (iii) to change
11 the purpose for which the water is to be used under a natural-flow,
12 storage, or storage-use appropriation to a purpose not at that time
13 permitted under the appropriation shall apply for approval of such
14 transfer or change to the Department of Natural Resources.

15 (b) The application for such approval shall contain (i)
16 the number assigned to such appropriation by the department, (ii)
17 the name and address of the present holder of the appropriation,
18 (iii) if applicable, the name and address of the person or entity
19 to whom the appropriation would be transferred or who will be
20 the user of record after a change in the location of use, type
21 of appropriation, or purpose of use under the appropriation, (iv)
22 the legal description of the land to which the appropriation is
23 now appurtenant, (v) ~~the name and address of each holder of a~~
24 ~~mortgage or deed of trust for the land to which the appropriation~~
25 ~~is now appurtenant,~~ (vi) the name and address of each holder of

1 a mortgage, trust deed, or other equivalent consensual security
2 interest against the tract or tracts of land to which the
3 appropriation is now appurtenant, (vi) if applicable, the legal
4 description of the land to which the appropriation is proposed
5 to be transferred, (vii) if a transfer is proposed, whether other
6 sources of water are available at the original location of use
7 and whether any provisions have been made to prevent either use
8 of a new source of water at the original location or increased
9 use of water from any existing source at that location, (viii)
10 if applicable, the legal descriptions of the beginning and end
11 of the stream reach to which the appropriation is proposed to be
12 transferred for the purpose of augmenting the flows in that stream
13 reach, (ix) if a proposed transfer is for the purpose of increasing
14 the quantity of water available for use pursuant to another
15 appropriation, the number assigned to such other appropriation by
16 the department, (x) the purpose of the current use, (xi) if a
17 change in purpose of use is proposed, the proposed purpose of
18 use, (xii) if a change in the type of appropriation is proposed,
19 the type of appropriation to which a change is desired, (xiii) if
20 a proposed transfer or change is to be temporary in nature, the
21 duration of the proposed transfer or change, and (xiv) such other
22 information as the department by rule and regulation requires.

23 (2) If a proposed transfer or change is to be temporary
24 in nature, a copy of the proposed agreement between the current
25 appropriator and the person who is to be responsible for use of

1 water under the appropriation while the transfer or change is in
2 effect shall be submitted at the same time as the application.

3 (3) Regardless of whether a transfer or a change in
4 the purpose of use is involved, the following changes in type of
5 appropriation, if found by the Director of Natural Resources to
6 be consistent with section 46-294, may be approved subject to the
7 following:

8 (a) A natural-flow appropriation for direct out-of-stream
9 use may be changed to a natural-flow appropriation for aboveground
10 reservoir storage or for intentional underground water storage;

11 (b) A natural-flow appropriation for intentional
12 underground water storage may be changed to a natural-flow
13 appropriation for direct out-of-stream use or for aboveground
14 reservoir storage;

15 (c) A natural-flow appropriation for direct out-of-stream
16 use, for aboveground reservoir storage, or for intentional
17 underground water storage may be changed to an instream
18 appropriation subject to sections 46-2,107 to 46-2,119 if the
19 director determines that the resulting instream appropriation would
20 be consistent with subdivisions (2), (3), and (4) of section
21 46-2,115;

22 (d) A natural-flow appropriation for direct out-of-stream
23 use, for aboveground reservoir storage, or for intentional
24 underground water storage may be changed to an appropriation for
25 induced ground water recharge if the director determines that the

1 resulting appropriation for induced ground water recharge would be
2 consistent with subdivisions (2)(a)(i) and (ii) of section 46-235;
3 and

4 (e) The incidental underground water storage portion,
5 whether or not previously quantified, of a natural-flow or
6 storage-use appropriation may be separated from the direct-use
7 portion of the appropriation and may be changed to a natural-flow
8 or storage-use appropriation for intentional underground water
9 storage at the same location if the historic consumptive use
10 of the direct-use portion of the appropriation is transferred
11 to another location or is terminated, but such a separation and
12 change may be approved only if, after the separation and change,
13 (i) the total permissible diversion under the appropriation will
14 not increase, (ii) the projected consequences of the separation
15 and change are consistent with the provisions of any integrated
16 management plan adopted in accordance with section 46-718 or 46-719
17 for the geographic area involved, and (iii) if the location of the
18 proposed intentional underground water storage is in a river basin,
19 subbasin, or reach designated as overappropriated in accordance
20 with section 46-713, the integrated management plan for that river
21 basin, subbasin, or reach has gone into effect, and that plan
22 requires that the amount of the intentionally stored water that is
23 consumed after the change will be no greater than the amount of the
24 incidentally stored water that was consumed prior to the change.
25 Approval of a separation and change pursuant to this subdivision

1 (e) shall not exempt any consumptive use associated with the
2 incidental recharge right from any reduction in water use required
3 by an integrated management plan for a river basin, subbasin, or
4 reach designated as overappropriated in accordance with section
5 46-713.

6 Whenever any change in type of appropriation is approved
7 pursuant to this subsection and as long as that change remains in
8 effect, the appropriation shall be subject to the statutes, rules,
9 and regulations that apply to the type of appropriation to which
10 the change has been made.

11 (4) The Legislature finds that induced ground water
12 recharge appropriations issued pursuant to sections 46-233 and
13 46-235 and instream appropriations issued pursuant to section
14 46-2,115 are specific to the location identified in the
15 appropriation. Neither type of appropriation shall be transferred
16 to a different location, changed to a different type of
17 appropriation, or changed to permit a different purpose of use.

18 (5) In addition to any other purposes for which transfers
19 and changes may be approved, such transfers and changes may
20 be approved if the purpose is (a) to augment the flow in a
21 specific stream reach for any instream use that the department has
22 determined, through rules and regulations, to be a beneficial use
23 or (b) to increase the frequency that a diversion rate or rate of
24 flow specified in another valid appropriation is achieved.

25 For any transfer or change approved pursuant to

1 subdivision (a) of this subsection, the department shall be
2 provided with a report at least every five years while such
3 transfer or change is in effect. The purpose of such report shall
4 be to indicate whether the beneficial instream use for which the
5 flow is augmented continues to exist. If the report indicates that
6 it does not or if no report is filed within sixty days after
7 the department's notice to the appropriator that the deadline
8 for filing the report has passed, the department may cancel its
9 approval of the transfer or change and such appropriation shall
10 revert to the same location of use, type of appropriation, and
11 purpose of use as prior to such approval.

12 (6) A quantified or unquantified appropriation for
13 incidental underground water storage may be transferred to a new
14 location along with the direct-use appropriation with which it is
15 recognized if the director finds such transfer to be consistent
16 with section 46-294 and determines that the geologic and other
17 relevant conditions at the new location are such that incidental
18 underground water storage will occur at the new location. The
19 director may request such information from the applicant as
20 is needed to make such determination and may modify any such
21 quantified appropriation for incidental underground water storage,
22 if necessary, to reflect the geologic and other conditions at the
23 new location.

24 (7) Unless an incidental underground water storage
25 appropriation is changed as authorized by subdivision (3)(e)

1 of this section or is transferred as authorized by subsection
2 (6) of this section or subsection (1) of section 46-291, such
3 appropriation shall be canceled or modified, as appropriate, by
4 the director to reflect any reduction in water that will be stored
5 underground as the result of a transfer or change of the direct-use
6 appropriation with which the incidental underground water storage
7 was recognized prior to the transfer or change.

8 Sec. 2. Section 46-291, Revised Statutes Cumulative
9 Supplement, 2008, is amended to read:

10 46-291 (1) Upon receipt of an application filed under
11 section 46-290 for a transfer in the location of use of an
12 appropriation, the Department of Natural Resources shall review
13 it for compliance with this subsection. The Director of Natural
14 Resources may approve the application without notice or hearing
15 if he or she determines that: (a) The appropriation is used and
16 will continue to be used exclusively for irrigation purposes; (b)
17 the only lands involved in the proposed transfer are (i) lands
18 within the quarter section of land to which the appropriation is
19 appurtenant, (ii) lands within such quarter section of land and
20 one or more quarter sections of land each of which is contiguous
21 to the quarter section of land to which the appropriation is
22 appurtenant, or (iii) lands within the boundaries or service
23 area of and capable of service by the same irrigation district,
24 reclamation district, public power and irrigation district, or
25 mutual irrigation or canal company; (c) after the transfer, the

1 total number of acres irrigated under the appropriation will be no
2 greater than the number of acres that could legally be irrigated
3 under the appropriation prior to the transfer; (d) all the land
4 involved in the transfer is under the same ownership or is within
5 the same irrigation district, reclamation district, public power
6 and irrigation district, or mutual irrigation or canal company;
7 (e) the transfer will not result in a change in the point of
8 diversion or the point of diversion will be changed but the
9 change meets the following requirements: (i) The new point of
10 diversion is on the same named stream, the same tributary, or
11 the same river or creek as the approved point of diversion; (ii)
12 the proposed point of diversion will not move above or below an
13 existing diversion point owned by another appropriator; and (iii)
14 the proposed point of diversion will not move above or below a
15 tributary stream or a constructed river return or a constructed
16 drain; and (f) the transfer will not diminish the water supply
17 available for or otherwise adversely affect any other surface
18 water appropriator. If transfer of an appropriation with associated
19 incidental underground water storage is approved in accordance
20 with this subsection, the associated incidental underground water
21 storage also may be transferred pursuant to this subsection as
22 long as such transfer would continue to be consistent with the
23 requirements of this subsection. If necessary, the boundaries of
24 the incidental underground water storage area may be modified to
25 reflect any change in the location of that storage consistent with

1 such a transfer. Transfers shall not be approved pursuant to this
2 subsection until the department has adopted and promulgated rules
3 and regulations establishing the criteria it will use to determine
4 whether proposed transfers are consistent with subdivision (1)(f)
5 of this section.

6 (2) If after reviewing an application filed under section
7 46-290 the director determines that it cannot be approved pursuant
8 to subsection (1) of this section, he or she shall cause a notice
9 of such application to be posted on the department's web site, to
10 be sent by certified mail to ~~each holder of a mortgage or deed of~~
11 ~~trust~~ each holder of a mortgage, trust deed, or other equivalent
12 consensual security interest that is identified by the applicant
13 pursuant to subdivision (1)(b)(v) of section 46-290 and to any
14 entity owning facilities currently used or proposed to be used for
15 purposes of diversion or delivery of water under the appropriation,
16 and to be published at the applicant's expense at least once each
17 week for three consecutive weeks in at least one newspaper of
18 general circulation in each county containing lands to which the
19 appropriation is appurtenant and, if applicable, in at least one
20 newspaper of general circulation in each county containing lands to
21 which the appropriation is proposed to be transferred.

22 (3) The notice shall contain: (a) A description of the
23 appropriation; (b) the number assigned to such appropriation in
24 the records of the department; (c) the date of priority; (d) if
25 applicable, a description of the land or stream reach to which

1 such water appropriation is proposed to be transferred; (e) if
2 applicable, the type of appropriation to which the appropriation
3 is proposed to be changed; (f) if applicable, the proposed change
4 in the purpose of use; (g) whether the proposed transfer or change
5 is to be permanent or temporary and, if temporary, the duration
6 of the proposed transfer or change; and (h) any other information
7 the director deems relevant and essential to provide the interested
8 public with adequate notice of the proposed transfer or change.

9 (4) The notice shall state (a) that any interested person
10 may object to and request a hearing on the application by filing
11 such objections in writing specifically stating the grounds for
12 each objection and (b) that any such objection and request shall be
13 filed in the office of the department within two weeks after the
14 date of final publication of the notice.

15 (5) Within the time period allowed by this section for
16 the filing of objections and requests for hearings, the county
17 board of any county containing land to which the appropriation
18 is appurtenant and, if applicable, the county board of any county
19 containing land to which the appropriation is proposed to be
20 transferred may provide the department with comments about the
21 potential economic impacts of the proposed transfer or change in
22 such county. The filing of any such comments by a county board
23 shall not make the county a party in the application process, but
24 such comments shall be considered by the director in determining
25 pursuant to section 46-294 whether the proposed transfer or change

1 is in the public interest.

2 Sec. 3. Section 46-701, Revised Statutes Cumulative
3 Supplement, 2008, is amended to read:

4 46-701 Sections 46-701 to 46-754 and sections 7, 8, and 9
5 of this act shall be known and may be cited as the Nebraska Ground
6 Water Management and Protection Act.

7 Sec. 4. Section 46-706, Revised Statutes Cumulative
8 Supplement, 2008, is amended to read:

9 46-706 For purposes of the Municipal and Rural Domestic
10 Ground Water Transfers Permit Act, the Nebraska Ground Water
11 Management and Protection Act, and sections 46-601 to 46-613.02,
12 46-636, 46-637, and 46-651 to 46-655, unless the context otherwise
13 requires:

14 (1) Person means a natural person, a partnership,
15 a limited liability company, an association, a corporation, a
16 municipality, an irrigation district, an agency or a political
17 subdivision of the state, or a department, an agency, or a bureau
18 of the United States;

19 (2) Ground water means that water which occurs in or
20 moves, seeps, filters, or percolates through ground under the
21 surface of the land;

22 (3) Contamination or contamination of ground water means
23 nitrate nitrogen or other material which enters the ground water
24 due to action of any person and causes degradation of the quality
25 of ground water sufficient to make such ground water unsuitable for

1 present or reasonably foreseeable beneficial uses;

2 (4) District means a natural resources district operating
3 pursuant to Chapter 2, article 32;

4 (5) Illegal water well means (a) any water well operated
5 or constructed without or in violation of a permit required by
6 the Nebraska Ground Water Management and Protection Act, (b) any
7 water well not in compliance with rules and regulations adopted and
8 promulgated pursuant to the act, (c) any water well not properly
9 registered in accordance with sections 46-602 to 46-604, or (d)
10 any water well not in compliance with any other applicable laws of
11 the State of Nebraska or with rules and regulations adopted and
12 promulgated pursuant to such laws;

13 (6) To commence construction of a water well means the
14 beginning of the boring, drilling, jetting, digging, or excavating
15 of the actual water well from which ground water is to be
16 withdrawn;

17 (7) Management area means any area so designated by a
18 district pursuant to section 46-712 or 46-718, by the Director
19 of Environmental Quality pursuant to section 46-725, or by
20 the Interrelated Water Review Board pursuant to section 46-719.
21 Management area includes a control area or a special ground water
22 quality protection area designated prior to July 19, 1996;

23 (8) Management plan means a ground water management plan
24 developed by a district and submitted to the Director of Natural
25 Resources for review pursuant to section 46-711;

1 (9) Ground water reservoir life goal means the finite or
2 infinite period of time which a district establishes as its goal
3 for maintenance of the supply and quality of water in a ground
4 water reservoir at the time a ground water management plan is
5 adopted;

6 (10) Board means the board of directors of a district;

7 (11) Acre-inch means the amount of water necessary to
8 cover an acre of land one inch deep;

9 (12) Subirrigation or subirrigated land means the natural
10 occurrence of a ground water table within the root zone of
11 agricultural vegetation, not exceeding ten feet below the surface
12 of the ground;

13 (13) Best management practices means schedules of
14 activities, maintenance procedures, and other management practices
15 utilized for purposes of irrigation efficiency, to conserve or
16 effect a savings of ground water, or to prevent or reduce present
17 and future contamination of ground water. Best management practices
18 relating to contamination of ground water may include, but not
19 be limited to, irrigation scheduling, proper rate and timing
20 of fertilizer application, and other fertilizer and pesticide
21 management programs. In determining the rate of fertilizer
22 application, the district shall consult with the University of
23 Nebraska or a certified crop advisor certified by the American
24 Society of Agronomy;

25 (14) Point source means any discernible, confined, and

1 discrete conveyance, including, but not limited to, any pipe,
2 channel, tunnel, conduit, well, discrete fissure, container,
3 rolling stock, vessel, other floating craft, or other conveyance,
4 over which the Department of Environmental Quality has regulatory
5 authority and from which a substance which can cause or contribute
6 to contamination of ground water is or may be discharged;

7 (15) Allocation, as it relates to water use for
8 irrigation purposes, means the allotment of a specified total
9 number of acre-inches of irrigation water per irrigated acre per
10 year or an average number of acre-inches of irrigation water per
11 irrigated acre over any reasonable period of time;

12 (16) Rotation means a recurring series of use and nonuse
13 of irrigation wells on an hourly, daily, weekly, monthly, or yearly
14 basis;

15 (17) Water well has the same meaning as in section
16 46-601.01;

17 (18) Surface water project sponsor means an irrigation
18 district created pursuant to Chapter 46, article 1, a reclamation
19 district created pursuant to Chapter 46, article 5, or a public
20 power and irrigation district created pursuant to Chapter 70,
21 article 6;

22 (19) Beneficial use means that use by which water may be
23 put to use to the benefit of humans or other species;

24 (20) Consumptive use means the amount of water that is
25 consumed under appropriate and reasonably efficient practices to

1 accomplish without waste the purposes for which the appropriation
2 or other legally permitted use is lawfully made;

3 (21) Dewatering well means a well constructed and used
4 solely for the purpose of lowering the ground water table
5 elevation;

6 (22) Emergency situation means any set of circumstances
7 that requires the use of water from any source that might
8 otherwise be regulated or prohibited and the agency, district,
9 or organization responsible for regulating water use from such
10 source reasonably and in good faith believes that such use is
11 necessary to protect the public health, safety, and welfare,
12 including, if applicable, compliance with federal or state water
13 quality standards;

14 (23) Good cause shown means a reasonable justification
15 for granting a variance for a consumptive use of water that
16 would otherwise be prohibited by rule or regulation and which the
17 granting agency, district, or organization reasonably and in good
18 faith believes will provide an economic, environmental, social, or
19 public health and safety benefit that is equal to or greater than
20 the benefit resulting from the rule or regulation from which a
21 variance is sought;

22 (24) Historic consumptive use means the amount of water
23 that has previously been consumed under appropriate and reasonably
24 efficient practices to accomplish without waste the purposes for
25 which the appropriation or other legally permitted use was lawfully

1 made;

2 (25) Monitoring well means a water well that is designed
3 and constructed to provide ongoing hydrologic or water quality
4 information and is not intended for consumptive use;

5 (26) Order, except as otherwise specifically provided,
6 includes any order required by the Nebraska Ground Water Management
7 and Protection Act, by rule or regulation, or by a decision adopted
8 by a district by vote of the board of directors of the district
9 taken at any regularly scheduled or specially scheduled meeting of
10 the board;

11 (27) Overall difference between the current and fully
12 appropriated levels of development means the extent to which
13 existing uses of hydrologically connected surface water and ground
14 water and conservation activities result in the water supply
15 available for purposes identified in subsection (3) of section
16 46-713 to be less than the water supply available if the
17 river basin, subbasin, or reach had been determined to be fully
18 appropriated in accordance with section 46-714;

19 (28) Test hole means a hole designed solely for the
20 purposes of obtaining information on hydrologic or geologic
21 conditions; and

22 (29) Variance means (a) an approval to deviate from a
23 restriction imposed under subsection (1), (2), (9), or (10) of
24 section 46-714 or (b) the approval to act in a manner contrary to
25 existing rules or regulations from a governing body whose rule or

1 regulation is otherwise applicable~~;~~

2 (30) Certified irrigated acres means the number of acres
 3 or portion of an acre that a natural resources district has
 4 approved for irrigation from ground water in accordance with law
 5 and with rules adopted by the district; and

6 (31) Certified water uses means beneficial uses of ground
 7 water for purposes other than irrigation identified by a district
 8 pursuant to rules adopted by the district.

9 Sec. 5. Section 46-707, Revised Statutes Cumulative
 10 Supplement, 2008, is amended to read:

11 46-707 (1) Regardless of whether or not any portion of
 12 a district has been designated as a management area, in order
 13 to administer and enforce the Nebraska Ground Water Management
 14 and Protection Act and to effectuate the policy of the state to
 15 conserve ground water resources, a district may:

16 (a) Adopt and promulgate rules and regulations necessary
 17 to discharge the administrative duties assigned in the act;

18 (b) Require such reports from ground water users as may
 19 be necessary;

20 (c) Require the reporting of water uses and irrigated
 21 acres by landowners and others with control over the water uses and
 22 irrigated acres for the purpose of certification by the district;

23 ~~(d)~~ (d) Require meters to be placed on any water wells
 24 for the purpose of acquiring water use data;

25 ~~(e)~~ (e) Require decommissioning of water wells that are

1 not properly classified as active status water wells as defined in
2 section 46-1204.02 or inactive status water wells as defined in
3 section 46-1207.02;

4 ~~(e)~~ (f) Conduct investigations and cooperate or contract
5 with agencies of the United States, agencies or political
6 subdivisions of this state, public or private corporations, or
7 any association or individual on any matter relevant to the
8 administration of the act;

9 ~~(f)~~ (g) Report to and consult with the Department
10 of Environmental Quality on all matters concerning the entry
11 of contamination or contaminating materials into ground water
12 supplies; and

13 ~~(g)~~ (h) Issue cease and desist orders, following ten
14 days' notice to the person affected stating the contemplated action
15 and in general the grounds for the action and following reasonable
16 opportunity to be heard, to enforce any of the provisions of the
17 act or of orders or permits issued pursuant to the act, to initiate
18 suits to enforce the provisions of orders issued pursuant to the
19 act, and to restrain the construction of illegal water wells or the
20 withdrawal or use of water from illegal water wells.

21 Before any rule or regulation is adopted pursuant to this
22 subsection, a public hearing shall be held within the district.
23 Notice of the hearing shall be given as provided in section 46-743.

24 (2) In addition to the powers enumerated in subsection
25 (1) of this section, a district may impose an immediate temporary

1 stay for a period of one hundred eighty days on the construction
2 of any new water well and on any increase in the number of
3 acres historically irrigated, without prior notice or hearing, upon
4 adoption of a resolution by the board finding that such temporary
5 immediate stay is necessary. The district shall hold at least
6 one public hearing on the matter within the district during such
7 one hundred eighty days, with the notice of the hearing given
8 as provided in section 46-743, prior to making a determination
9 as to imposing a permanent stay or conditions in accordance with
10 subsections (1) and (6) of section 46-739. Within forty-five days
11 after a hearing pursuant to this subsection, the district shall
12 decide whether to exempt from the immediate temporary stay the
13 construction of water wells for which permits were issued prior
14 to the date of the resolution commencing the stay but for which
15 construction had not begun prior to such date. If construction of
16 such water wells is allowed, all permits that were valid when the
17 stay went into effect shall be extended by a time period equal to
18 the length of the stay and such water wells shall otherwise be
19 completed in accordance with section 46-738. Water wells listed in
20 subsection (3) of section 46-714 and water wells of public water
21 suppliers are exempt from this subsection.

22 Sec. 6. Section 46-739, Revised Statutes Cumulative
23 Supplement, 2008, is amended to read:

24 46-739 (1) A district in which a management area has
25 been designated shall by order adopt one or more of the following

1 controls for the management area:

2 (a) It may allocate the amount of ground water that may
3 be withdrawn by ground water users;

4 (b) It may adopt a system of rotation for use of ground
5 water;

6 (c) It may adopt well-spacing requirements more
7 restrictive than those found in sections 46-609 and 46-651;

8 (d) It may require the installation of devices for
9 measuring ground water withdrawals from water wells;

10 (e) It may adopt a system which requires reduction of
11 irrigated acres pursuant to subsection (2) of section 46-740;

12 (f) It may limit or prevent the expansion of irrigated
13 acres or otherwise limit or prevent increases in the consumptive
14 use of ground water withdrawals from water wells used for
15 irrigation or other beneficial purposes;

16 (g) It may require the use of best management practices;

17 (h) It may require the analysis of water or deep soils
18 for fertilizer and chemical content;

19 (i) It may impose mandatory educational requirements
20 designed to protect water quality or to stabilize or reduce the
21 incidence of ground water depletion, conflicts between ground water
22 users and surface water appropriators, disputes over interstate
23 compacts or decrees, or difficulties fulfilling the provisions of
24 other formal state contracts or agreements;

25 (j) It may require water quality monitoring and reporting

1 of results to the district for all water wells within all or part
2 of the management area;

3 (k) It may require district approval of (i) transfers of
4 ground water off the land where the water is withdrawn, ~~or~~ (ii)
5 transfers of rights to use ground water that result from district
6 allocations imposed pursuant to subdivision (1)(a) of this section
7 or from other restrictions on use that are imposed by the district
8 in accordance with this section, (iii) transfers of certified
9 water uses or certified irrigated acres between landowners or other
10 persons, or (iv) transfers of certified water uses or certified
11 irrigated acres between parcels or tracts under the control of a
12 common landowner or other person. Such approval may be required
13 whether the transfer is within the management area, from inside
14 to outside the management area, or from outside to inside the
15 management area, except that transfers for which permits have been
16 obtained from the Department of Natural Resources prior to July 16,
17 2004, or pursuant to the Municipal and Rural Domestic Ground Water
18 Transfers Permit Act shall not be subject to district approval
19 pursuant to this subdivision. If the district adopts rules and
20 regulations pursuant to this subdivision, such regulations shall
21 require that the district deny or condition the approval of any
22 such transfer when and to the extent such action is necessary to
23 (A) ensure the consistency of the transfer with the purpose or
24 purposes for which the management area was designated, (B) prevent
25 adverse effects on other ground water users or on surface water

1 appropriators, (C) prevent adverse effects on the state's ability
2 to comply with an interstate compact or decree or to fulfill the
3 provisions of any other formal state contract or agreement, and (D)
4 otherwise protect the public interest and prevent detriment to the
5 public welfare. Approval of any transfer of certified water uses
6 or certified irrigated acres under subdivision (1)(k)(iii) or (iv)
7 of this section shall further be subject to the district having
8 complied with the requirements of section 7 of this act;

9 (l) It may require, when conditions so permit, that
10 new or replacement water wells to be used for domestic or other
11 purposes shall be constructed to such a depth that they are less
12 likely to be affected by seasonal water level declines caused by
13 other water wells in the same area;

14 (m) It may close all or a portion of the management
15 area to the issuance of additional permits or may condition the
16 issuance of additional permits on compliance with other rules and
17 regulations adopted and promulgated by the district to achieve the
18 purpose or purposes for which the management area was designated;
19 and

20 (n) It may adopt and promulgate such other reasonable
21 rules and regulations as are necessary to carry out the purpose for
22 which a management area was designated.

23 (2) In adopting, amending, or repealing any control
24 authorized by subsection (1) of this section or sections 46-740
25 and 46-741, the district's considerations shall include, but not

1 be limited to, whether it reasonably appears that such action will
2 mitigate or eliminate the condition which led to designation of the
3 management area or will improve the administration of the area.

4 (3) Upon request by the district or when any of
5 the controls being proposed are for the purpose of integrated
6 management of hydrologically connected ground water and surface
7 water, the Director of Natural Resources shall review and comment
8 on the adoption, amendment, or repeal of any authorized control
9 in a management area. The director may hold a public hearing to
10 consider testimony regarding the control prior to commenting on the
11 adoption, amendment, or repeal of the control. The director shall
12 consult with the district and fix a time, place, and date for
13 such hearing. In reviewing and commenting on an authorized control
14 in a management area, the director's considerations shall include,
15 but not be limited to, those enumerated in subsection (2) of this
16 section.

17 (4) If because of varying ground water uses, varying
18 surface water uses, different irrigation distribution systems, or
19 varying climatic, hydrologic, geologic, or soil conditions existing
20 within a management area the uniform application throughout such
21 area of one or more controls would fail to carry out the intent
22 of the Nebraska Ground Water Management and Protection Act in a
23 reasonably effective and equitable manner, the controls adopted
24 by the district pursuant to this section may contain different
25 provisions for different categories of ground water use or portions

1 of the management area which differ from each other because of
2 varying climatic, hydrologic, geologic, or soil conditions. Any
3 differences in such provisions shall recognize and be directed
4 toward such varying ground water uses or varying conditions. Except
5 as otherwise provided in this section, if the district adopts
6 different controls for different categories of ground water use,
7 those controls shall be consistent with section 46-613 and shall,
8 for each such category, be uniform for all portions of the area
9 which have substantially similar climatic, hydrologic, geologic,
10 and soil conditions.

11 (5) The district may establish different water
12 allocations for different irrigation distribution systems.

13 (6)(a) The district may establish different provisions
14 for different hydrologic relationships between ground water and
15 surface water.

16 (b) For management areas a purpose of which is the
17 integrated management of hydrologically connected ground water and
18 surface water, the district may establish different provisions for
19 water wells either permitted or constructed before the designation
20 of a management area for integrated management of hydrologically
21 connected ground water and surface water and for water wells
22 either permitted or constructed on or after the designation date
23 or any other later date or dates established by the district.
24 Permits for construction of new wells not completed by the date
25 of the determination of fully appropriated shall be subject to any

1 conditions imposed by the applicable natural resources district.

2 (c) For a management area in a river basin or part
3 of a river basin that is or was the subject of litigation over
4 an interstate water compact or decree in which the State of
5 Nebraska is a named defendant, the district may establish different
6 provisions for restriction of water wells constructed after January
7 1, 2001, if such litigation was commenced before or on May 22,
8 2001. If such litigation is commenced after May 22, 2001, the
9 district may establish different provisions for restriction of
10 water wells constructed after the date on which such litigation
11 is commenced in federal court. An appeal from a decision of
12 the district under this subdivision shall be in accordance with
13 the hearing procedures established in the Nebraska Ground Water
14 Management and Protection Act.

15 (d) Except as otherwise authorized by law, the district
16 shall make a replacement water well as defined in section 46-602,
17 or as further defined in district rules and regulations, subject to
18 the same provisions as the water well it replaces.

19 (7) If the district has included controls delineated in
20 subdivision (1)(m) of this section in its management plan, but has
21 not implemented such controls within two years after the initial
22 public hearing on the controls, the district shall hold a public
23 hearing, as provided in section 46-712, regarding the controls
24 before implementing them.

25 (8) In addition to the controls listed in subsection

1 (1) of this section, a district in which a management area has
2 been designated may also adopt and implement one or more of the
3 following measures if it determines that any such measures would
4 help the district and water users achieve the goals and objectives
5 of the management area: (a) It may sponsor nonmandatory educational
6 programs; and (b) it may establish and implement financial or
7 other incentive programs. As a condition for participation in
8 an incentive program, the district may require water users or
9 landowners to enter into and perform such agreements or covenants
10 concerning the use of land or water as are necessary to produce
11 the benefits for which the incentive program is established and
12 shall further condition participation upon satisfaction of the
13 requirements of section 7 of this act.

14 Sec. 7. (1) Notwithstanding any other provision of law,
15 no district shall approve a transfer of certified water uses
16 or certified irrigated acres or allow a ground water user or
17 landowner to participate in a financial or other incentive program
18 established pursuant to subsection (8) of section 46-739 unless
19 the person seeking such transfer or participation in such program
20 has submitted to the district a report of title issued by an
21 attorney or a registered abstractor, on a form prescribed by the
22 district, reflecting (a) the owner and legal description of the
23 land from which the certified water uses or certified irrigated
24 acres are to be transferred or which is the subject of such program
25 and (b) the existence of all liens, evidenced by the filing of

1 a mortgage, trust deed, or other equivalent consensual security
2 interest, against the land from which the certified water uses or
3 certified irrigated acres are to be transferred or which is the
4 subject of such program and the name and address of each such
5 lienholder, if any. If the report of title reflects the existence
6 of any lien evidenced by the filing of a mortgage, trust deed, or
7 other equivalent consensual security interest, written consent to
8 such transfer or participation in such program shall be obtained
9 from each such lienholder. The district may assess a fee against
10 the person seeking such transfer or participation in such program
11 to recoup its costs in reviewing the report of title.

12 (2) Approval of a transfer of certified water uses or
13 certified irrigated acres or authorization of a ground water user
14 or landowner to participate in such financial or other incentive
15 program by a district shall not affect the rights of any lienholder
16 who is not reflected in the report of title and from whom the
17 required consent was not obtained. Such a lienholder may bring an
18 action against the person seeking such transfer or participation
19 in such program for damages or injunctive or other relief for any
20 injury done to the lienholder's interest in land or use of ground
21 water resulting from such transfer or participation.

22 (3) This section does not limit the right to resort to
23 other means of review, redress, or relief provided by law.

24 Sec. 8. An instrument of transfer of the right to use
25 ground water shall be recorded by a natural resources district

1 with the register of deeds in each county in which is situated
2 the real estate, or any part thereof, from which a transfer
3 of certified water uses or certified irrigated acres occurred,
4 in any case in which a transfer of certified water uses or
5 certified irrigated acres has been approved by such district. The
6 instrument of transfer of the right to use ground water shall
7 include a description of the real estate to and from which the
8 certified water uses or certified irrigated acres were transferred,
9 the nature of the transfer, and the date on which the transfer
10 occurred. The district may recover the cost of filing an instrument
11 of transfer of the right to use ground water from the person
12 seeking the transfer. The instrument of transfer of the right to
13 use ground water shall be executed, acknowledged, and recorded in
14 the same manner as conveyances of real estate.

15 Sec. 9. The determination of certified water uses or
16 certified irrigated acres by a natural resources district shall not
17 affect the allocations of ground water established under section
18 46-740.

19 Sec. 10. Original sections 46-290, 46-291, 46-701,
20 46-706, 46-707, and 46-739, Revised Statutes Cumulative Supplement,
21 2008, are repealed.